



The Marine Assistance Industry Journal

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CHAIRMAN'S ADDRESS:

If you have time to read this, it is probably a rainy Tuesday morning otherwise you would be out towing, selling, fixing, or administrating in an effort to maximize the summer season. I know it has taken more than one

reminder from Tina for me to *make* the time necessary to write this. For those of us with kids, we have them to manage and keep busy also. Needless to say it is a busy time of year. My polls from around the country have been generally encouraging. It is safe to say that when the weather is good, the boaters are out and the number of tows is up. The boating public is still a-bit cautious and on the edge of weather, fuel prices and general costs of boating. Overall there is a good feeling about the improvements in our industry and rest assured C-PORT is watching your back for changes in regulations that may have an impact on your business.



The C-PORT Board of Directors was tasked by the membership with a number of items that are of great importance to the industry. The priority list has changed a few times since our conference in January, but the work is getting done and we will have much to share over the next few months. Currently TSAC (Towing Safety Advisory Committee) is the focus of our Legislative Committee as the new regulations, licensing, and inspection rules are due for release over the summer. C-PORT has been working in the circles that influence these changes mandated by Congress and are confident that our work to show the value of our industry and deter changes that would negatively impact our businesses will pay off. Some of you have likely received letters from the USCG about a Phase I voluntary examination of your vessels. This is a sign of things to come. Our best course of action in Phase I is to have these examinations done as they will help to determine the final inspection guidelines that we will be bound by. If we do not cooperate, the process will move along without your input and these regulations may be ones we cannot comply with making our transition much more painful. Joe Frohnhoefer and Tina Cardone are working closely with TSAC to address the concerns that have already been raised and the meetings they are attending are addressing these issues as they arise. Please notify the C-PORT office when you receive these letters and Tina can give you the information you need to help this process in a positive way for the industry.

All press is good press, so they say, however I have yet to be convinced. There seems to be a noticeable increase in press this year and 99% of it has been for the positive. The explosion of social media has made what would have previously been a blurb in the back of the local section of a newspaper into dramatic pictures with ongoing reader commentary and unfortunately sometimes the promotion of very poor information as truths. It seems there are cameras everywhere and too easily trained on us while we are doing our jobs. An example of this is a video that someone posted on YouTube showing a case we had pulling a sailboat out from under a bridge at night. It was then reposted by another person on to our FaceBook page. I strongly encourage everyone to take a hard look at their risk management policies and adjust them with the expectation that you are being watched at all times. This is not at all bad news if you manage it properly, but consider the bar of professionalism to be raised by Captain Cocktail upon days end at your local watering hole. Historically our press has been of extraordinary efforts reported by a life saved to a newspaper reporter, followed by a certificate from the Mayor, USCG, Marine Patrol etc. It was a long slow burn that we could manage. It seems that we have moved into what I call 7/4 press (July 4th) with Black Cats going off all around and the occasional M-80 to make sure everyone is paying attention. This is the new format and not likely to regress anytime soon, so I would encourage everyone to learn it and use it to the advantage of the industry when able. Do not engage in forum arguments, you will not win; and be sure of your statements as they will be checked and questioned.

I am happy to report that the USCG is saving more lives as a result of more people using EPIRBS and PLB's on a regular basis. The cost of these items has dropped significantly and is well worth the investment should

you find yourself overcome. One of the most significant decisions to come out of the NTSB recently was the ruling on the Duck Boat accident that occurred in Philadelphia in 2010. The mate at the helm was texting and determined to be at fault for the deaths of 2 people. This is a growing concern and the use of cell phones while on duty should be closely monitored and policy written into your company manuals addressing the issue. This being said, it is a dynamic time, we are doing our jobs better and gaining value as a critical part of the local waterfront by the public and government alike. I believe this is a result of our growing professionalism and leadership in our local areas. Keep up the efforts and always be moving forward.

Best,

Chris Shaffner
Chairman

FEATURES:

Questioning Arbitration's Seaworthiness

By John K. Fulweiler, Esq.



As a lawyer, my stage is crowded with both victories and losses. That is the nature of the beast and the best I can hope is that at the end of the day, my victories outnumber my losses. While some losses you can walk off, a loss that lacks a reasoned explanation can be very frustrating. Like the occasional court decision, not every arbitration award will be an example of prosaic reasoning, but unlike a court decision, there is typically no meaningful appeal process by which to seek relief from being caught behind a frail and dottery arbitration award that lacks an understandable explanation for its outcome. This, along with other issues unique to arbitration, makes it important that a party understand the pros and cons of agreeing to arbitration.

An arbitration is a private forum that the parties have agreed to use to decide a dispute. Unlike mediation, the decision issued by the arbitrators (often referred to as an "arbitration award") is typically binding on the parties absent a narrow set of circumstances, such as when it can be shown that the arbitrators exceeded their powers or where there was a manifest disregard of the law. From a practical perspective, because the threshold to overturn an arbitration award is generally high, a party considering arbitration is probably best served by simply realizing that the arbitration award will be final and binding. End of story.

How an arbitration will unfold is driven by the rules of the arbitration forum. In some instances, the process only requires written submissions which the arbitrators use to base their decision. Sometimes the parties submit written submissions and the arbitrators convene hearings during which live testimony from various witnesses is received into the record. In general, the rules of evidence are very relaxed in an arbitration forum meaning that what you believe is unreliable evidence may be considered by the arbitrators whereas it may not have been in a judicial setting. Likewise, the conduct of attorneys, in my personal opinion, is not as strictly regulated in an arbitration as it would be in a courtroom setting which may allow for arguments and procedural issues to be raised that would never be raised before a judge or jury.

Another consideration in electing to use arbitration is that the arbitrators may be known in and have involvement with the parties' industry. This is particularly the case in maritime arbitration where some of the maritime arbitration programs actually require that the arbitrators possess maritime experience. One or both parties may find that this is a positive factor as the conflict or circumstances may be better understood by someone, in the lexicon of the wordsmith L.L. Cool J, who is from 'round the way'. Still, there are probably good and convincing arguments against allowing someone from 'round the way' to rule on your maritime dispute when you hail from a different neighborhood.

In a court house setting, the appellate process forces the trial court to explain its reasoning and get its facts right. Thus, while it is easy to lose in grand form before the trial court, it won't be at the fickle whim of the

judge. In not finding your witnesses credible and disagreeing with your interpretation of the law, the trial court judge will almost always issue some form of explanation that, at a minimum, will give the losing party a measure of understanding as to where the claim got off the rails and may, sometimes, provide a basis by which to appeal. In my personal opinion, this is not always the case with arbitration where I have seen arbitrators regurgitate each party's respective arguments at length while only providing a short statement on how the award was actually reached. Without a meaningful basis to appeal and no reasoned explanation for a loss, arbitration can sometimes lead to bouts of dry heaving as you attempt to swallow an unfavorable ruling. That is, in my experience an arbitration award may read more like a papal dictate than a reasoned explanation.

Look, lots of times you will hear arbitration championed because it is supposedly quicker and cheaper than the judicial process. My response in general to such assertions is to ask: "Okay, but at what ultimate cost?" Arbitration will always be good for certain claims and will always be able to trumpet certain inherent advantages over litigation, but after having paddled around in the arbitration waters for more than decade, I am increasingly circumspect. I query whether the ultimate costs of arbitration (both monetarily and otherwise) are, in fact, less than the judicial process.

The bottom line is that before you elect to pursue arbitration, sit down with your attorney and have a real chat about the arbitration process and the arbitrators that may rule on your claim. If you intend to nominate an arbitrator or you are deciding between arbitrators, ask your attorney for some of the arbitrator's previous awards. Read them and ask yourself whether you understand the outcomes and how they were reached or conversely, whether they sound more like papal dictates. You may decide that the arbitration forum is a good fit, you may have good prior experiences with arbitration, and you may favor its streamlined approach to decision making. Whatever the case, the point is that you should take the time to understand the pros and cons of arbitration before you toss the trial court over the side rail.

Underway and making way.

--- John K. Fulweiler (John is an admiralty attorney and licensed mariner. He can be reached via e-mail at john@fulweilerlaw.com or at 401-667-0977.)

Turning Insurance into a Partnership

By: Richard DeSimone, President, Travelers Ocean Marine

When a C-PORT member casts off and gets underway, the operation ahead can be as simple as providing fuel to a stalled yacht – or as tough as performing a risky rescue during a fierce storm. Regardless of the situation, smart operators know that the professionalism they demonstrate as they provide services to private vessels builds their reputation and can generate future business.

What they may not be as aware of is that the same careful approach to their operations can also pay off in their ability to tap into C-PORT's Insurance Program specifically designed for their industry sector and C-PORT members. It's an arrangement that can mean lower premiums, more complete coverage, and responsive claims handling -- all made possible through close collaboration, a "partnership" of sorts, between C-PORT, Travelers and Starkweather & Shepley.

For those who are not used to thinking of insurance as a partnership, the progress that has been made over the past few years at C-PORT should be compelling evidence that what is good for insurers is often good for the policyholders as well. Fewer claims keep an insurer's costs down, but it also means that the operators as a group face lower out-of-pocket costs, fewer disruptions to business and possibly lower premiums.

When Travelers began its relationship with C-PORT in 2003, the prior insurance program had been subject to several premium increases as a result of frequent claims. Whether they operated safely or had frequent mishaps, every operator was affected by the same rising rates.

Working together, Travelers, Starkweather and C-PORT began the process of creating risk control programs and turning around the rising tide of claims. Through a collaborative effort, they educated members about the benefits that come when safety is taken seriously and fully embedded into an operation.

An outgrowth of the close working relationship has been the Accreditation for Commercial Assistance and Professional Towing (ACAPT), an online training program that helps prepare captains and crews to handle difficult situations. Another incentive for operators to practice risk control has been an aggressive effort by C-PORT to make its insurance program available only to operators with good safety programs and fewer claims.

Today, operators who choose to take advantage of C-PORT's group insurance have access to coverage for land and waterborne exposures that has been designed specifically to meet the needs of the commercial assistance and towing industry. When claims occur, operators are assured of service from claims professionals with expertise in ocean marine issues. And with Starkweather & Shepley providing agency services, operators know they will have a quick turnaround on certificates of insurance, policy issuance, quotes and other valuable agency services.

At a sophisticated level, insurance is much more than just one more overhead expense for a business. Insurance allows people to do their jobs while transferring risk from the everyday exposures they face to the insurance company. The right insurance can make the difference between a business that survives bad luck and one that is sunk by the first mishap that comes along.

Through our collaboration with C-PORT and Starkweather & Shepley, Travelers is able to provide reasonable insurance rates and outstanding claims service to people who are involved in a perilous, but absolutely essential, industry. We're proud of our association with C-PORT, and look forward to many more years of working together to reduce risk and enhance insurance services.

(Richard DeSimone is the President of Travelers Ocean Marine. In this role, he is responsible for the overall leadership and management of the business unit. Travelers OceanMarine is a leading provider of property and casualty insurance with an extensive product portfolio including cargo, hull, liabilities and luxury yacht.

With more than 30 years of marine insurance experience, Rich joined Travelers in 2000 to lead the marine unit. Previously, he spent 24 years with Atlantic Mutual. A 1971 graduate of City University of New York – Baruch College, he received a Masters in Transportation Management from the State University of New York – Maritime College in 1977. In addition, Rich received the Associated in Marine Insurance Management (AMIM) designation in 1979 and attended the Insurance Institute of America's Advance Executive Education Program at the Wharton School – University of Pennsylvania.

He is a past Chairman of the American Institute of Marine Underwriters (AIMU), and the first Chairman from the United States to lead the International Union of Marine Insurance (IUMI). Rich has served on the Board of Directors of the American Bureau of Shipping and the National Cargo Bureau. Currently, he is the Chairman of The Water Quality Insurance Syndicate (WQIS). He served as a Lieutenant in the U.S. Navy from 1972-1975.)

C-PORT MEMBERS' LOG:

In Memoriam

Joe Milton Beasenberg, April 22, 1942 – July 9, 2011

Mr. Joe Beasenberg was owner and operator of Charleston Marine Services and formerly having done business as TowBoatU.S. Charleston, passed away on July 9, 2011. He was on vacation with his wife Cora when he suffered a fatal heart attack. Joe was a member of the James Island Yacht Club and served as Chief Quarter Master (SS) with the United States Navy as Navigator. Many of us knew Joe personally and our deepest sympathy goes out to Cora and his family.

Rescues Reported

July 7, 2011- Capt. Robert (Bert) Lomax, Sea Tow Wrightsville Beach, received notification of a capsized vessel in Rich's Inlet, NC and subsequently rescued 3 elderly men. Already underway, Capt. Lomax was on-scene in 10-12 minutes, finding one man floating near the surf away from the capsized boat. After pulling the man aboard safely, Capt. Lomax was able to locate the overturned vessel and the other two men clinging to it. After successfully pulling the men aboard, Capt. Lomax navigated through sand bars and breakers to deliver the men to an awaiting EMS unit at a nearby boat ramp.

July 5, 2011- Governor de Jongh of the US Virgin Islands, praised the numerous emergency responders who heeded the call for assistance after the inter-island ferry, Royal Miss Belmar, became grounded on Great St. James while en route from Cruz Bay, St. John to St. Croix. "The efforts of these responders ensured the safe rescue of the passengers who were stranded on board the grounded ferry and through diligent and precise techniques, the injured, the other passengers and crew were brought safely to St. Thomas," he said, adding that "enough cannot be said about the fine job that each and every one responding to the scene did in ensuring the safety of the 102 persons on board."

"The fine work of the employees of VITEMA, Planning and Natural Resources, Emergency Medical Services, Virgin Islands Police, V.I. Port Authority Police Division, National Park Service, St. Thomas and St. John Rescue, V.I. Fire Services, Property and Procurement, Health, Tourism and the Office of the Governor was timely and expertly coordinated. The responders reacted as they are trained to and led a rescue operation that we are all proud of today," the governor said. De Jongh also acknowledged the work of the Sea Tow salvage company and other citizens who responded in smaller vessels to assist in Monday night's rescue. "Passengers who were on the ferry when it ran aground had the highest praise for the rescue operation that was launched last night."

July 4, 2011- Capt. John Gridley, Sea Tow Clarks Hill Lake helped to save the life of a man from a near-by vessel. While seeking safe harbor during an intense wind storm, Capt. Gridley was alerted to people in distress while in the water from a near-by house boat. After a 12 year old boy was blown overboard by the wind, a man from the vessel jumped into the water without wearing a life jacket. When Capt. Gridley and friend arrived on scene, the man was unconscious and floating face down. After pulling the man aboard his vessel and successfully performing CPR, the man was revived and delivered to EMS.

Comments from Captain Charlie Meyer, TowBoatU.S. Lake of the Ozarks- July 4th weekend, the media briefly mentioned some "Boat Wake Injuries". It sounds quite routine; not too exciting. The Official News Release about one particular incident from the Missouri State Highway Patrol was, (as expected) pretty ho-hum and just the facts. Of course there were few witnesses to what really took place. The above incident was a little more than routine... As described in the release, a 43 year old woman was injured from being thrown in the air on a deck boat and landing back down on the boat hard enough to injure her back. She had to have medical attention. The boating traffic was extremely heavy in the area causing large waves, confused chop and a small local thunderstorm was developing with winds in excess of 25 mph. Two State Patrol boats located the vessel carrying the woman who was in extreme pain and the officers were attempting to get the boat and woman to medical attention ashore as soon as possible. One of the officer's had to abandon his boat and be put aboard the deck boat to provide help to the woman. They were going to attempt to cross the lake to the Lake Ozark side where medical attention could get to the woman quicker. Due to rough water, they were

unable to cross. We were about a mile away and proceeded to assist. On scene, we found the patrol boat, about 400 foot from shore in a 25 mph wind and drifting rapidly toward a rocky shore. We hooked up and took the Patrol Boat in tow, meanwhile the Troopers and the distressed vessel made it to a dock on the Sunrise Beach side and were attending to the injured woman while waiting for Fire Rescue and EMS to arrive. The location would require the woman be carried up the bluff over 100 ft on a backboard.

TowBoatUS. Crewman and Fire Fighter, Rick Anthony was dropped off to assist in getting the woman up the hill and to the ambulance. This whole scenario took nearly an hour, after which the Troopers came back to drop off our crewman and retrieve their boat. This was not the first time we have gathered up drifting Patrol Boats due to emergency situations. The Troopers are almost always first on the scene and don't think twice about jumping in the water to assist someone in trouble or jumping aboard a boat to perform CPR and first aid. It isn't exactly a "stellar" career move to abandon a rather expensive piece of equipment which may wind up being a beach ornament or a very costly "crappie bed", but when a life, safety or injuries to others are at stake they don't put themselves first. WELL DONE GUYS!!

EDITORIAL:

From the Desk of Tina Cardone, Executive Director



“Those who cannot remember the past are condemned to repeat it.” – George Santayana. History and lessons; we have 25 years of history and lessons. C-PORT is celebrating its 25th Anniversary at the Annual Conference to be held January 8- January 9, 2012 at the Grand Hyatt Tampa Bay, FL. We are fortunate to have a wealth of knowledge stored within the minds of our industry founders. Many of them will be in attendance allowing our newer operators the unique opportunity to sit one on one and hear the history and hopefully learn the lessons so they “are not condemned to repeat it”. I’ve been part of this industry for decades seeing it from many sides. One thing that never changed is no matter how much you think you know there’s still more to learn.

This year’s conference will be an event not to be missed. The theme is: “Incredible Past, Unlimited Future - Look Back 25 Years; Look Forward 25 Years”. There will be panels and presentations, speakers and promotions. All of these experts will do their best to impart valuable information that will help you to grow and to develop your business as well as update you on important events that may affect your business in the future. I urge you not to underestimate the industry knowledge that will be available to you at the conference from salvage techniques, towing practices, hiring procedures, marketing strategies and the like. Some of this information will be brought to you through our speakers; some you may gather by talking with your fellow operators. Along with the general sessions and annual membership meeting, many networking opportunities will be available to allow for this exchange of information from our invited guests and speakers and our fellow operators.

Look back and look forward and join your fellow marine assistance professionals at the C-PORT 25th Anniversary Conference. I urge you not to miss this opportunity.

Best Regards,

Tina Cardone
Executive Director

NEWS AND BULLETINS IN REVIEW:

July 21, 2011 - SAVE THE DATE! 2012 C-PORT 25th Annual Conference will be held January 8 - January 9, 2012 at the Grand Hyatt Tampa Bay, Tampa, FL! Don't miss this special **25th Anniversary Conference** celebrating the growth and development of the Marine Assistance Industry! Something for everyone from informative presentations and discussion panels, networking, exhibits and more!
(TowBoatU.S. Conference is being held in conjunction beginning January 6, 2012)



Hotel rooms are now available at the Grand Hyatt Tampa Bay. C-PORT has secured discounted rates for hotel rooms for all attendees! The Grand Hyatt created a special website for attendees to use to make their reservations. To reserve your room, go to https://resweb.passkey.com/Resweb.do?mode=welcome_ei_new&eventID=3423190.

July 15, 2011 – C-PORT is pleased to announce that AFRAS (Association for Rescue at Sea) desires to continue its program to annually recognize a deserving member of C-PORT for their rescue efforts. The Association for Rescue at Sea (AFRAS) was formed in 1976 to foster traditional maritime search and rescue values through suitable recognition of deserving personnel, and to facilitate cooperation in search and rescue. AFRAS has expressed a desire to continue its program, in cooperation with C-PORT, to annually recognize a deserving member of C-PORT that has shown exceptional skill and determination to save lives during a rescue incident in the maritime environment.

The Award will be conferred on an individual or group of individuals who perform exceptional acts in attempting to save life in the maritime environment. Instances where the rescuer places their own life at risk will be given highest consideration. The Award may be given posthumously. Nominations for this year's award are to be mailed or emailed to C-PORT. The rescue must have occurred between November 1, 2010 and October 31, 2011. Include a full description of the circumstances and events giving rise to the nomination and include such factors as:

- Location of the incident
- Prevailing weather conditions
- Skill displayed
- Determination to conduct the rescue operation
- Exceptional courage demonstrated
- Degree of risk involved
- Any other information supporting the nomination

Once the nominations are received, they will be evaluated on their merits and the award, if one is recognized, will be presented at the C-PORT Annual Conference, January 8-January 9, 2012, by AFRAS. Send your nominations to C-PORT no later than November 1, 2011.

June 29, 2011 – As reported in TradeOnlyToday, "The Environmental Protection Agency issued fuel pump labeling and other requirements for gasoline blends containing more than 10 percent and as much as 15 percent ethanol, known as E15...."While both partial waivers exclude marine engines and other non-road engines, such as snowmobiles, lawn and garden equipment, the NMMA continues to be concerned that the measures outlined in EPA's misfueling rule do not take significant steps to address anticipated problems with consumer confusion and the risk of misfueling," the association said in a statement. "In addition, the rule does not ensure compatible fuels remain available for the nation's 13 million registered boat owners or the hundreds of millions of owners of gasoline-powered equipment."

June 23, 2011 - The NTSB has released its findings in the July 2010 "Duck Boat" Accident. They determined that on the tugboat "the mate was inattentive to his duties while navigating the vessel because he was distracted by his repeated use of a cell phone and lap top computer while communicating with his family who were dealing with a family emergency" and failed to keep a proper lookout. In addition, the NTSB also found fault with Ride The Ducks International, LLC, the duck boat owner. They stated the maintenance personnel

failed to make sure a pressure cap was secure resulting in the overheated engine. They also stated that while safety policies and procedures were written, the master of the duck boat “did not take all actions appropriate to address the risk of anchoring in an active navigation channel”. (Since this member notice, the mate has been criminally charged.)

June 20, 2011 – Tina Cardone, Executive Director, and Joe Frohnhoefer, C-PORT Director and TSAC member, attended the Spring 2011 TSAC Meeting held in Memphis, TN on June 15-June 16, 2011. USCG Commander Patrick Clark, Designated Federal Officer, announced at the meeting that this would be his last meeting in that capacity. CDR Clark will be serving in Iraq this fall. His contributions to the committee have been great and he will be missed.



The committee has been working on many projects, all in various stages of completion. These regulatory projects include towing vessel inspections, a new licensing scheme to allow for mariners to enhance their career choices, barge and bridge lighting resolutions focused on boating safety, and others. We understand that both vessel inspections and the new licensing scheme are due to be published in the Federal Register soon. Once published as a Proposed Rulemaking, the committee will be able to diligently continue their work on these important tasks.

Other presentations at the meeting included US Coast Guard National Maritime Center’s (NMC) update with a focus on the new Medical Form. They stressed that the key to successfully completing the process is “prevention and control”. Dr. Gillis, heading the medical review processing at NMC stated that the positions that touch public safety are the most sensitive. Standards of care for these individuals must be at current acceptable medical standards and the conditions must be controlled. Supporting data is essential for the smooth processing of these credentials. The website is being updated to assist mariners through this process.

The USCG Towing Vessel National Center of Expertise also presented an update on their facility. This facility is responsible for the vessel inspections and is growing to be prepared for the final regulations when they come online. The center is located at Paducah, KY. Pat Lee, National Program Coordinator explained the Towing Vessel Bridging Program (TVBP) is progressing well. Phase I is underway and focuses on Outreach and Education. It involves industry volunteering to have Coast Guard examine and inspect their vessels. Those towing vessels currently required to be inspected are done so according to current regulatory standards. Those currently classified as uninspected towing vessels, predominately those in the assistance towing industry, are examined (rather than inspected) as no current regulations apply. This is likely to change with the new vessel inspection rule.

Promotional consideration received by way of sponsorship in 2011 from:

TowBoatU.S./Vessel Assist –

“Thank you C-PORT and members for years of Excellent Service to Boaters!”

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C-PORT was founded in 1985 to act as a liaison between the marine assistance industry and public agencies and organizations involved with boating safety, marine assistance, marine salvage and other marine-related operations. The association was created in part to afford a means of cooperation with the government in matters of national concern; to provide an objective, self-regulating body for the marine assistance industry; and to promote, through legislative, regulatory, and governmental initiatives, the maintenance and expansion of the marine assistance industry. For more information, contact C-PORT at (954) 261-2012 or visit www.cport.us.